

JULIE A. MERSCH, ESQ.  
Nevada Bar No. 004695  
LAW OFFICE OF JULIE A. MERSCH  
701 S. 7<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 387-5868  
Fax: (702) 387-0109  
[jam@merschlau.com](mailto:jam@merschlau.com)  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JESSIE MURRAY,

Plaintiff

v.

SUN LIFE ASSURANCE COMPANY OF  
CANADA,

Defendant

Civil Action No.: 2:14-cv-00467-JCM-GWF

**DISCOVERY PLAN AND SCHEDULING  
ORDER**

**SPECIAL SCHEDULING REQUESTED**

Plaintiff JESSIE MURRAY and Defendant SUN LIFE ASSURANCE COMPANY OF CANADA jointly move this Court for a special scheduling review of the parties' proposed discovery plan in this matter.

**I. RULE 26(F) CONFERENCE.**

Pursuant to FRCP 26(f), a meeting was held on October 14, 2015, attended by Julie A. Mersch, Esq., counsel for Plaintiff, and Kyle Kirby, Esq., counsel for Defendant. Counsel discussed the claims and legal issues at the meeting and agreed that the standard discovery plan is not best-suited for this lawsuit for the reasons set forth below.

**II. NATURE OF CASE AND PURPOSE OF SPECIAL REVIEW.**

This dispute involves Plaintiff's claim for benefits under a policy of group short-term and long-term disability insurance issued by Defendant to Plaintiff's employer, MGM Resorts International, for the benefit of its employees. The Plaintiff's amended complaint alleges a claim

1 under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq.  
2 (“ERISA”). Discovery may be limited to the administrative record for Plaintiff’s administrative  
3 claim and appeal.

4 Accordingly, the parties jointly request that this Court review and adopt the proposed  
5 discovery and case schedule set forth below:

6 **III. PROPOSED PLAN.**

7 The parties have conferred and agreed as follows:

8 A. Production and Review of the Administrative Record: Defendant will produce a  
9 proposed administrative record for Plaintiff’s review by **November 10, 2015**. On or before  
10 **December 8, 2015**, Plaintiff will notify Defendant of her position as to the following issues: (1)  
11 whether Plaintiff believes that any additional documents should be added to the administrative  
12 record; (2) whether Plaintiff believes that any documents contained in the proposed  
13 administrative record should be omitted, and (3) whether Plaintiff will file a motion seeking  
14 leave to conduct any discovery beyond the administrative record produced by Defendant.  
15

16 B. Filing of Administrative Record/Motion for Discovery: On or before **December**  
17 **22, 2015**, the parties will file a joint administrative record with this Court. In the event the parties  
18 cannot reach an agreement on the joint administrative record, Plaintiff will file any motions that  
19 she believes are appropriate, including but not limited to moving to conduct discovery beyond the  
20 administrative record and/or moving to supplement or omit from the administrative record, by  
21 **January 11, 2016**, and Defendant expressly reserves the right to oppose any such motions filed  
22 by Plaintiff (pending determination on any motions, the parties will file on **February 5, 2016**  
23 those portions of the administrative record on which they do agree).

24 *////*

1 C. Briefing Schedule for Legal Issues/Merits of the Case:

2 The primary legal issues in this matter are the following: (1) the standard of review to be  
3 applied to Defendant's decision to deny Plaintiff's claim for short- and long-term disability  
4 benefits; and (2) whether, applying that standard of review, Defendant's decision should be  
5 affirmed by the Court.

6 If a joint administrative record is timely filed and Plaintiff does not seek to conduct  
7 discovery beyond the administrative record, or to supplement or omit from the administrative  
8 record, the parties propose that dispositive motions be filed no later than **February 19, 2016**.  
9 Thereafter, the parties will file opposing memoranda by **March 11, 2016**, and reply memoranda  
10 by **March 25, 2016**.

11 If Plaintiff does seek and is permitted discovery beyond the administrative record, the  
12 above deadlines will be suspended. The parties will work together and with the Court to prepare  
13 a new scheduling order, and may seek a status conference to address any outstanding discovery or  
14 other issues.

15  
16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

1           WHEREFORE, the parties jointly request that this Court adopt the proposed discovery  
2 and case schedule set forth herein.

3           Dated this 29<sup>th</sup> day of October, 2015.

                  Dated this 29<sup>th</sup> day of October, 2015.

4           LAW OFFICE OF JULIE MERSCH

                  PIERCE ATWOOD, LLP

5  
6           By: /s/ Julie A. Mersch  
              Julie A. Mersch, Esq.  
7           Nevada Bar No.: 004695  
              701 S. 7<sup>th</sup> Street  
8           Las Vegas, NV 89101  
              Attorney for Plaintiff

                  By: /s/ Kyle N. Kirby  
                  Kyle N. Kirby, Esq. (Pro Hac Vice)  
                  254 Commercial St.  
                  Portland, ME 04101

                  Jill Garcia, Esq.  
                  Nevada Bar No. 007805  
                  OGLETREE, DEAKINS, NASH,  
                  SMOAK & STEWART, PC  
                  Wells Fargo Tower, Suite 1500  
                  3800 Howard Hughes Pkwy.  
                  Las Vegas, NV 89169  
                  Attorneys for Defendant

13  
14  
15           **IT IS SO ORDERED,**

16           Dated this 3<sup>rd</sup> day of November, 2015.

17  
18             
19           UNITED STATES MAGISTRATE JUDGE